

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MYRON VIRGIL ASKEW,

Defendant-Appellant.

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UNPUBLISHED

July 8, 1997

No. 173176

Recorder's Court

LC No. 93-003113

Before: Sawyer, P.J., and Saad and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of two counts of second-degree murder, MCL 750.317; MSA 28.549, two counts of assault with intent to commit murder, MCL 750.83; MSA, 28.278, and possession of a firearm during commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two concurrent terms of life in prison for the second-degree murder convictions, two concurrent terms of fifteen to thirty years' imprisonment for the assault with intent to commit murder convictions, and a consecutive term of two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant argues that the evidence presented at trial was insufficient to sustain his convictions for second-degree murder under a theory of complicity, and that the trial court erred in denying his motion for a directed verdict. We disagree.

In determining whether evidence presented at trial was sufficient to sustain a conviction, this Court, viewing the evidence presented in a light most favorable to the prosecution, must determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 516 n 6; 489 NW2d 748 (1992). Similarly, when reviewing a trial court's decision following a motion for a directed verdict, we must consider the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the

charged crime were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1992).

To establish second-degree murder, the prosecution must show that defendant caused the death of the victim and that the killing was done with malice and without legal justification or excuse. *People v Wofford*, 196 Mich App 275, 277-278; 492 NW2d 747 (1992). Malice is the intent to kill, the intent to do great bodily harm, or the intent to create a high risk of death or great bodily harm with knowledge that either is the probable result. Malice may be inferred from the facts and circumstances of the killing. *Id.*

MCL 767.39; MSA 28.979 provides:

Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.

Aiding and abetting describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime. *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995). To support a finding that a defendant aided and abetted a crime, the prosecutor must show that: (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *Id.* An aider and abettor's state of mind may be inferred from all the facts and circumstances. *Id.*

Viewing the evidence presented in a light most favorable to the prosecution, defendant positioned himself within a doorway from which gunshots were observed to have been discharged. Additionally, Dejuan Edwards ordered that defendant kill Jimmy Davis, thus implicating defendant's involvement in the criminal activity. Consequently, we conclude that sufficient evidence exists such that a rational trier of fact could have found that defendant performed acts which assisted in the commission of the crime. Finally, because of the enterprise shared by defendant and Edwards which led to their being together at the scene of crime and defendant's conduct throughout the eruption of gunfire, viewed together with Edwards' statement ordering defendant to kill Davis, a rational trier of fact could have inferred that defendant either intended that the shootings be perpetrated or otherwise possessed knowledge that Edwards intended to perpetrate the shootings. Moreover, we find that three victims were killed in the course of the events in question and that those killings constituted the crime of murder. *Turner, supra* at 569. Consequently, a reasonable jury could have found that the essential elements of aiding and abetting second-degree murder were proven beyond a reasonable doubt. *Wolfe, supra* at 516 n 6. The trial court did not err in denying defendant's motion for a directed verdict. *Jolly, supra* at 466; *Daniels, supra* at 665.

Defendant finally argues that the evidence presented at trial was insufficient to sustain his conviction for the crime of assault with intent to murder Davis and David Anderson. We disagree.

The elements of the crime of assault with intent to commit murder are: (1) an assault, (2) committed with the specific intent to murder, (3) which, if successful, would make the killing a murder. *People v Rockwell*, 188 Mich App 405, 411; 470 NW2d 673 (1991). Assault is defined as an attempted battery or any unlawful act which places another in reasonable apprehension of an imminent battery. *People v Johnson*, 407 Mich 196, 223; 284 NW2d 718 (1979). Circumstantial evidence and reasonable inferences drawn therefrom may constitute satisfactory proof of the elements of the crime of assault with intent to commit murder; intent may be inferred from any facts in evidence. *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992).

It is axiomatic that the gunfire which occurred at the Davis residence placed both victims in reasonable apprehension of an imminent battery. Moreover, the intent to commit murder may be inferred both from the discharging of weapons, Edwards' instruction to defendant to kill Davis, and both Davis' and Anderson's wounds sustained in the course of the gunfire. Finally, had Davis or Anderson died as a result of the wounds sustained, the killing would have constituted murder. *Rockwell, supra* at 411. Therefore, a reasonable jury could have found that defendant committed the charged offenses of assault with intent to commit murder. *Wolfe, supra* at 516 n 6.

A rational trier of fact could have further found that defendant aided and abetted the crimes of assault with intent to commit murder. The prosecutor introduced sufficient evidence to show that defendant or Edwards committed the crime. Moreover, viewing the evidence presented in a light most favorable to the prosecution, a rational trier of fact could have found that defendant acted or gave encouragement that assisted the commission of the crime and that defendant intended to commit the crime or had knowledge that Edwards intended to commit the crime. *Turner, supra* at 568-569. Consequently, a reasonable jury could have found that the essential elements of aiding and abetting the crime of assault with intent to commit murder were proven beyond a reasonable doubt. *Wolfe, supra* at 516 n 6.

Affirmed.

/s/ David H. Sawyer  
/s/ Henry William Saad  
/s/ Hilda R. Gage